

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Trustees and Fiduciaries of the Iron Workers District Council
(Philadelphia and Vicinity) Benefit and Pension Plans, et al.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Regina C. Hertzog, Esquire and Ryan R. Sweeney, Esquire
Cleary, Josem & Trigiani, LLP, 325 Chestnut Street, Suite 200
Philadelphia, PA 19106 (215)735-9099

DEFENDANTS

Barry L. Bowles and BNC Contractors

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Tort Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

ERISA 29 U.S.C. Section 1132

Brief description of cause:

Action to collect contributions, interest and liquidated damages on delinquent benefit fund contributions

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE
05/12/2020

SIGNATURE OF ATTORNEY OF RECORD

Regina C. Hertzog

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2 International Plaza, Suite 102, Phila., PA 19113 & 11600 Norcom Road, Phila., PA 19154

Address of Defendant: 43430 East Florida Avenue, Hemet, California 92544

Place of Accident, Incident or Transaction: Philadelphia, Pennsylvania

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when *Yes* is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☐ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 05/12/2020

Regina C. Hertzig
Must sign here
Attorney-at-Law / Pro Se Plaintiff

46917

Attorney I.D. # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases
(Please specify): ERISA

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Regina C. Hertzig, Esquire, counsel of record or pro se plaintiff, do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☒ Relief other than monetary damages is sought.

DATE: 05/12/2020

Regina C. Hertzig
Sign here if applicable
Attorney-at-Law / Pro Se Plaintiff

46917

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Trustees and Fiduciaries of the Iron Workers District
Council (Philadelphia and Vicinity) Pension Benefit
and Pension Plans, et al .

v.

Barry L. Bowles and BNC Contractors

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

05/12/2020

Date

Regina C. Hertzig
Regina C. Hertzig, Esquire

Attorney-at-law

Plaintiffs

Attorney for

(215)735-9099

Telephone

(215)640-3201

FAX Number

rhertzig@cjtllaw.org

E-Mail Address

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TRUSTEES AND FIDUCIARIES of the :
IRON WORKERS DISTRICT COUNCIL :
(PHILADELPHIA AND VICINITY). :
BENEFIT AND PENSION PLANS; :
IRON WORKERS DISTRICT COUNCIL :
(PHILADELPHIA AND VICINITY) PENSION :
PLAN; IRON WORKERS DISTRICT COUNCIL :
(PHILADELPHIA AND VICINITY) :
BENEFIT PLAN :
2 International Plaza, Suite 102 :
Philadelphia, PA 19113 :

CIVIL ACTION NO.

and :

TRUSTEES OF THE INTERNATIONAL :
ASSOCIATION OF BRIDGE, STRUCTURAL, :
ORNAMENTAL AND REINFORCING :
IRON WORKERS' LOCAL UNION NO. 401 :
ANNUITY FUND, APPRENTICE TRAINING :
FUND, VACATION FUND AND :
SUPPLEMENTAL WELFARE FUND; :
INTERNATIONAL ASSOCIATION OF BRIDGE, :
STRUCTURAL, ORNAMENTAL AND :
REINFORCING IRON WORKERS' LOCAL :
UNION NO. 401; INTERNATIONAL :
ASSOCIATION OF BRIDGE, STRUCTURAL, :
ORNAMENTAL AND REINFORCING IRON :
WORKERS' LOCAL UNION NO. 401 ANNUITY :
FUND; INTERNATIONAL ASSOCIATION OF :
BRIDGE, STRUCTURAL, ORNAMENTAL AND :
REINFORCING IRON WORKERS' :
LOCAL UNION NO. 401 APPRENTICE :
TRAINING FUND; INTERNATIONAL :
ASSOCIATION OF BRIDGE, STRUCTURAL, :
ORNAMENTAL AND REINFORCING IRON :
WORKERS' LOCAL UNION NO. 401 :
VACATION FUND; INTERNATIONAL :
ASSOCIATION OF BRIDGE, STRUCTURAL, :
ORNAMENTAL AND REINFORCING IRON :
WORKERS' LOCAL UNION NO. 401 :
SUPPLEMENTAL WELFARE FUND; :

PHILADELPHIA STEEL ERECTORS'
ASSOCIATION INDUSTRY ADVANCEMENT
FUND; PHILADELPHIA STEEL ERECTORS'
DRUG AND ALCOHOL TESTING FUND

11600 Norcom Road
Philadelphia, PA 19154,

Plaintiffs,

v.

BARRY L. BOWLES
43430 East Florida Ave
Hemet, California, 92544

and

BNC CONTRACTORS
43430 East Florida Ave
Hemet, California, 92544

Defendants.

COMPLAINT

The Trustees and Fiduciaries ("District Council Trustees") for, on behalf of, and along with the Iron Workers District Council (Philadelphia and Vicinity) Pension Fund ("District Council Pension Fund") and Iron Workers District Council (Philadelphia and Vicinity) Benefit Fund ("District Council Health Fund") (collectively, "District Council Funds"); the Trustees and Fiduciaries of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers' Local Union No. 401 Annuity Fund, Apprenticeship Training Fund, Vacation Fund and Supplemental Welfare Fund ("Local 401 Trustees") for, on behalf of, and along with the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers' Local Union No. 401 Annuity Fund ("Local 401 Annuity Fund"), International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers' Local Union No. 401 Apprentice Training

Fund ("Apprentice Training Fund"), International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers' Local Union No. 401 Vacation Fund ("Vacation Fund"), International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers' Local Union No. 401 Supplemental Welfare Fund ("Supplemental Welfare Fund"), The Philadelphia Steel Erectors' Association Industry Advancement Fund ("Industry Advancement Fund"), Philadelphia Steel Erectors' Drug and Alcohol Testing Fund ("Drug Testing Fund"), and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers' Local Union No. 401 ("Local 401") for their Complaint herein respectfully allege as follows:

INTRODUCTION

1. This is an action to collect delinquent employee benefit fund contributions from Defendants BNC Contractors, Inc. ("Company") and Barry Bowles ("Bowles") due pursuant to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §1001 et. seq. and the Labor Management Relations Act of 1947, as amended (hereinafter "LMRA"), 29 U.S.C. §185.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to Sections 502(a)(3)(B), (d)(1), and (f) and 4301(c) of ERISA, 29 U.S.C. §§1132 (a)(3)(B), (d)(1), and (f), and 1451(c), and Section 301(a) of the LMRA, 29 U.S.C. §185(a).
3. This Court is one of proper venue under ERISA §§502(e)(2), 29 U.S.C. §§1132(e)(2) because the Plaintiffs have offices in the Eastern District of Pennsylvania.

PARTIES

4. The District Council Funds, the Local 401 Annuity Fund, Apprentice Training Fund, Vacation Fund, and Supplemental Welfare Fund are trust funds established under 29 U.S.C. § 186(c)(5) and “multiemployer plans” and “employee benefit plans” within the meaning of 29 U.S.C. § 1002(37), (1), (2) and (3).
5. The Industry Advancement Fund and Drug Testing Fund are funds established by the Philadelphia Steel Erectors’ Association for the purpose of fostering and advancing the interests of steel erectors in Eastern Pennsylvania and the surrounding region.
6. The District Council Trustees are trustees and fiduciaries for the District Council Funds within the meaning of 29 U.S.C. §1002(21). They are authorized to bring this action on behalf the District Council Funds.
7. The Local 401 Trustees are trustees and fiduciaries for the Local 401 Annuity Fund, the Apprenticeship Training Fund, the Vacation Fund, and the Supplemental Welfare Fund (collectively, “Local 401 Funds”). They are authorized to bring this action on behalf of the Local 401 Funds.
8. Plaintiff Local 401 is an unincorporated association commonly referred to as a labor union.
9. The Plaintiffs maintain their principal place of business and are administered from offices listed in the caption, which are located in the Eastern District of Pennsylvania.
10. Defendant Company is an employer in an industry affecting commerce within the meaning of 29 U.S.C. §§152(2), (6) and (7), 1002(5), (11) and (12) which maintains or maintained the business address listed in the caption.

11. Upon information and belief, Defendant Bowles is or was a controlling owner of Defendant Company. Bowles maintains or maintained a business office at the address listed in the caption of the Complaint.
12. Upon information and belief, Defendant Bowles is or was an officer of Defendant Company, with control over the assets of the Defendant Company.
13. At all times relevant hereto, Defendant Company was a party to agreements whereby it agreed:
 - a. to make full and timely payments to the District Council Funds, Local 401 Funds, Industry Advancement Fund, Drug Testing Fund; and Local 401;
 - b. to make certain contributions and/or payments to the District Council Funds, Local 401 Funds, the Industry Advancement Fund, and the Drug Testing Fund based on the number of hours worked by each such employee;
 - c. to produce, upon request by the District Council Funds; Local 401 Funds, the Industry Advancement Fund, or the Drug Testing Fund all books and records deemed necessary to conduct an audit of Company's records concerning its obligations to the District Council Funds, Local 401 Funds, the Industry Advancement Fund, or the Drug Testing Fund; and
 - d. to pay interest and liquidated damages and all costs of litigation, including attorneys' fees, expended by the District Council Funds; Local 401 Funds, the Industry Advancement Fund; and/or the Drug Testing Fund to collect any amounts due as a consequence of the Company's failure to comply with its contractual obligations as described in subparagraphs (a), (b), or (c).

A true and correct copy of the relevant agreement is attached hereto as Exhibit A (Local 401 Agreement and Signature Page).

COUNT I
Plaintiffs v. Defendant BNC Contractors, Inc.

14. The above paragraphs are incorporated herein by reference as though duly set forth at length.
15. Defendant Company failed to pay certain contributions and/or remit amounts deducted from employees' pay to the District Council Funds, Local 401 Funds, the Industry Advancement Fund, the Drug Testing Fund, and Local 401 during the months of February, June, and July of 2018
16. For the period of February, June, and July of 2018, Defendant Company owes the District Council Funds at least \$11,723.50 in principal, as well as interest and liquidated damages.
17. For the period of February, June, and July of 2018, Defendant Company owes the Local 401 Funds, the Industry Advancement Fund, the Drug Testing Fund, and Local 401 at least \$12,500.34, as well as interest and liquidated damages
18. Defendant Company has failed and refused to pay the amounts owed.
19. Pursuant to Section 502(g)(2)(B), (C) and (D) of ERISA, 29 U.S.C. §1132(g)(2)(B), (C), and (D), Defendant Company owes interest and liquidated damages on principal amounts, and attorneys' fees and costs.

WHEREFORE, Plaintiffs ask that the Court:

- (1) Enter judgment in favor of the Plaintiffs and against Defendant Company for principal contributions as follows:
 - (a) To the District Council Funds: \$11,723.50;

- (b) To the Local 401 Funds, Industry Advancement Fund, Drug Testing Fund, and Local 401: \$12,500.34.
- (2) Enter judgment in favor of the Plaintiffs and against the Defendant Company for interest on the amounts awarded in paragraph (1) as a rate of 1.5% per month pursuant to the relevant Agreements and 29 U.S.C. §1132(g)(2)(B);
 - (3) Enter judgment in favor of the Plaintiffs and against the Defendant Company for liquidated damages pursuant to the relevant Agreements and 29 U.S.C. §1132(g)(2)(C);
 - (4) Enter judgment in favor of the Plaintiffs and against the Defendant Company, jointly and severally, for attorneys' fees and costs pursuant to the relevant Agreements and 29 U.S.C. § 1132(g)(2)(D),
 - (5) Grant any other further relief the court finds just and proper.

COUNT II

Plaintiffs v. Defendant Barry Bowles

- 21. The above paragraphs are incorporated herein by reference as though duly set forth at length.
- 22. Defendant Bowles is or was responsible for preparing, reviewing, authorizing payment and submitting monthly reports and contributions to the Plaintiffs. In this capacity, Defendant Bowles exercised control over the disposition of money that became a plan asset immediately upon the date Defendant Company's obligation to contribute arose.
- 23. As set forth in the collective bargaining agreement, "[a]ll sums due the trust fund[s] pursuant to this Collective Bargaining Agreement shall be an asset of, and be vested in, the trust fund when due. The employer signatory hereto shall not have any legal or equitable right, title or interest in contributions to the trust funds when due, and any and all

contributions as of the due date shall be considered trust fund assets.” (Exhibit A, Article VII, Section 3.C, Section 4.C, Section 8.H).

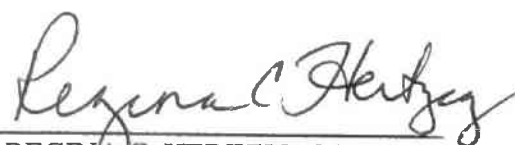
24. Defendant Bowles exercised discretionary authority and/or discretionary control respecting the management and/or disposition of assets of the Plaintiffs.
25. As a result of exercising control and management over Plaintiffs’ assets, Defendant Bowles is a fiduciary under ERISA. 29 U.S.C. §1002(21)(A)(i).
26. Under ERISA, a fiduciary is required to “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries...for the exclusive purpose of... providing benefits to [them].” 29 U.S.C. §1104(a)(1).
27. As set forth in Count I and throughout this Complaint, Defendant Bowles failed to timely pay monies owed as a condition of collective bargaining agreements when due and owing to the Plaintiffs.
28. By failing to make contributions or payments when due and owing, Defendant Bowles withheld assets of the Plaintiffs.
29. Under ERISA, “any person who is a fiduciary with respect to the plan who breaches any one of the responsibilities, obligations, or duties imposed upon fiduciaries” is personally liable “to make good to such plan any losses to the plan resulting from each such breach, and to restore the plan any profits of such fiduciary which have been made through the use of assets of the plan by the fiduciary...” 29 U.S.C. §1109(a).
30. As such, Defendant Bowles is personally liable for the delinquency discussed in Count I of this complaint.

WHEREFORE, Plaintiff District Council Funds asks that the Court:

- (1) Enter judgment in favor of the Plaintiffs and against Defendant Bowles, jointly and severally with Defendant Company, for principal contributions as follows:
 - (a) To the District Council Funds: \$11,723.50;
 - (b) To the Local 401 Funds, Industry Advancement Fund, Drug Testing Fund, and Local 401: \$12,500.34.
- (2) Enter judgment in favor of the Plaintiffs and against Defendant Bowles, jointly and severally with Defendant Company, for interest on the amounts awarded in paragraph (1) as a rate of 1.5% per month pursuant to the relevant Agreements and 29 U.S.C. §1132(g)(2)(B);
- (3) Enter judgment in favor of the Plaintiffs and against Defendant Bowles, jointly and severally with Defendant Company, for liquidated damages pursuant to the relevant Agreements and 29 U.S.C. §1132(g)(2)(C);
- (4) Enter judgment in favor of the Plaintiffs and against Defendant Bowles, jointly and severally with Defendant Company, for attorneys' fees and costs pursuant to the relevant Agreements and 29 U.S.C. § 1132(g)(2)(D),
- (5) Grant any other further relief the court finds just and proper.

Respectfully submitted,

CLEARY, JOSEM & TRIGIANI LLP

BY: 
REGINA C. HERTZIG, ESQUIRE
RYAN R. SWEENEY, ESQUIRE
Constitution Place
325 Chestnut Street, Suite 200
Philadelphia, PA 19106
(215) 735-9099

Dated: May 12, 2020

VERIFICATION

REGINA C. HERTZIG, ESQUIRE, hereby states that she is the attorney for the Plaintiffs, Trustees and Fiduciaries of the Iron Workers District Council (Philadelphia and Vicinity) Benefit and Pension Plans, et al., in this matter. The undersigned states that the facts set forth in the within Plaintiffs' Complaint are true and correct to the best of her knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.


REGINA C. HERTZIG, ESQUIRE
Attorney for Plaintiffs

Date: 05/12/2020